

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SCOTT HUTCHISON ENTERPRISES,	:	Case No. 1:01-cv-00776
et al.	:	
	:	Judge Weber
Plaintiffs	:	
	:	<b>NOTICE TO TAKE THE DEPOSITION</b>
vs.	:	<b>OF MICHAEL D. GHEEN, U.S. ARMY</b>
	:	<b>CORPS OF ENGINEERS, RETIRED</b>
RHODES, INC., et al.	:	<b>CHIEF REGULATORY BOARD</b>
	:	
Defendants	:	

**TO:** All Attorneys of Record

**WITNESS TO BE DEPOSED:** Michael D, Gheen  
(Retired Chief Regulatory Board)  
Corps of Engineers  
EPA Division  
502 8<sup>th</sup> Street  
Huntington, West Virginia 25701

**DATE AND TIME:** Thursday, October 23, 2003  
at 10:00 a.m.

**PLACE DEPOSITION IS TO  
BE TAKEN:** At the offices of: Corps of Engineers  
EPA Division  
502 8<sup>th</sup> Street  
Huntington, West Virginia 25701

**PLEASE TAKE NOTICE** that at the above-stated date, hour and place, we shall take the deposition of the witness above-stated, pursuant to the Federal Rules of Civil Procedure, for all purposes permitted pursuant to law, before a notary public, at which time the witness hereby being notified shall appear and at which time any party or their attorney may appear and examine,

if they may see fit.

This deposition is subject to continuance from time to time and place to place until completed.

Respectfully submitted,

\_\_\_\_\_  
S/William P. Schroeder  
William P. Schroeder (0027123)  
SCHROEDER, MAUNDRELL, BARBIERE & POWERS  
11935 Mason Road, Suite 110  
Cincinnati, Ohio 45249  
(513) 583-4212 (telephone)  
(513) 583-4203 (facsimile)  
**Attorney for Plaintiffs**

**CERTIFICATE OF SERVICE**

\_\_\_\_\_  
I hereby certify that a true and accurate copy of the foregoing was served upon the following this 14<sup>th</sup> day of October, 2003:

Thomas R. Schuck, Esq.  
1800 Firststar Tower  
425 Walnut Street  
Cincinnati, OH 45202-3957  
***Attorney for Defendant, H.T. Boggs***

Sam Casolari, Esq.  
Marshall Dennehey, et al.  
120 E. Mill Street, Suite 240  
Akron, OH 44308  
***Attorney for Defendant, Larry Rhodes***

Kevin J. Waldo, Esq.  
413 Center Street  
Ironton, OH 45638-1505  
***Of Counsel for Defendant, H.T. Boggs***

Craig R. Paulus, Esq.  
Taft, Stettinius & Hollister  
1800 First Tower  
425 Walnut Street  
Cincinnati, OH 45202-3957  
***Of Counsel for Defendant, H.T. Boggs***

\_\_\_\_\_  
S/ William P. Schroeder  
William P. Schroeder

**Issued by the**  
**UNITED STATES DISTRICT COURT**

Southern

DISTRICT OF

West Virginia

Scott Hutchison Enterprises, et al.

**SUBPOENA IN A CIVIL CASE**

V.

Rhodes, Inc., et al.

Case Number:<sup>1</sup> C-1-01-776 (S.D. Ohio)

TO: Michael D. Gheen, Retired Chief  
 Corps. Of Engineers, EPA Division  
 502 Eighth St., Huntington, W. Virginia 25701

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Corps of Engineers, 502 Eighth Street, Huntington, W. Virginia 25701

DATE AND TIME

October 23, 2003 at 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Exhibit A for detailed documents to be produced.

PLACE

Corps of Engineers, 502 Eighth Street, Huntington, W. Virginia 25701

DATE AND TIME

October 23, 2003 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

William P. Schroeder, Attorney for Plaintiffs

Schroeder, Maundrell, Barbieri &amp; Powers

11935 Mason Road, Suite 110, Cincinnati, Ohio 45249 (513) 583-4211

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**of Subpoena to Michael D. Gheen**

You are commanded to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below:

Any and all records regarding or pertaining to W.N. and Scott Hutchison Partners, Scott Hutchison Enterprises, Inc., Scott Hutchison, Inc., H.T. Boggs, Boggs Landing, Boggs Landing, Inc., Navy Trucking or L.J. Navy Trucking regarding land located in Burlington, Ohio and any wetland, environmental, enforcement, cease and desist, remediation or other action matter of the U.S. Army Corps of Engineers.